

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CHARLES WILKERSON,

Petitioner,

-Vs-

UNITED STATES OF AMERICA,

Respondent./

CRIM. NO. 9207CR06338
CIVIL NO. 04-11771-RGS

AFFIDAVIT OF MR. CHARLES WILKERSON

I, Affiant, Charles Wilkerson, pro-se, do hereby depose and says:

1. I am the Petitioner charged in this case and I have personal knowledge surrounding the facts set forth herein. I am also presently incarcerated at the United States Lewisburg Penitentiary in Pennsylvania. I am 29 years old (D.O.B. 7/28/75). Affiant is referred to herein as: I, me, my, Petitioner and Mr. Wilkerson etc.;

2. That affiant was arrested for these offenses on August 17, 1992. I was arraigned in Dorchester District Court on August 18, 1992 and then released on bail;

3. That affiant defaulted on the case dated on September 30, 1992;

4. On May 10, 1993, I was brought before the Court on the defaulted warrant. Attorney Tomasetti, Esq. was appointed to represent me;

5. That I had a brief conversation with Mr. Tomasetti, Esq. in the lock-up about my case, at which time he told me that he could not try my case (after explaining my innocence to him and the Police

1 Officer planting the drugs on my person. I then became very stressed
2 out, desperate and under severe duress). Mr. Tomasetti, then stated
3 that he could get me a suspended sentence, although I had no know-
4 ledge of what a suspended sentence was. Mr. Tomasetti further said
5 that I will not go to jail for the charges if I just signed a piece
6 of paper ... at which time I did hurriedly (which should also be
7 noted that during said times, affiant had a reading and writing
8 impairment. See, No. 11 at infra);

9 6. That due to me being 17 years old and still committed to
10 D.Y.S. until I was 18 years old, I didn't want DYS to come get me
11 and deal with them and DSS (at the same token), once I got in their
12 custody, I unknowingly did what Mr. Tomasetti said to do. I was
13 never asked about or told my rights to a jury trial, although I
14 constantly stressed my innocence of the charges against me;

15 7. That Mr. Tomasetti, Esq. did not discuss the facts of my
16 case, reviewed my defense to my case, or discussed the search
17 warrant that had resulted in the seizure of evidence;

18 8. That affiant subsequently was brought into the courtroom,
19 where the prosecutor told the judge that there was an agreement;

20 9. That my admission to sufficient facts was not voluntarily,
21 because I was led to believe that if I didn't plead guilty to the
22 charges, affiant's attorney would not try the case (meaning repre-
23 sent Petitioner in court-- being abandoned), and I would remain in
24 lock-up from there on-- allowing the authorities to find out my
25 commitment to DYS and transfer me to their custody, seeing that I
26 wasn't 18 years old yet to be considered an adult;

27 10. That at the time of my arrest, affiant had just turned 17
28 years old and although I had been in and out the courthouse in prior

1 cases as an adult, I was "ONLY A JUVENILE, DOING JUVENILE ACTIVI-
2 TIES AND UNDER A JUVENILE MENTALITY," who lied about his age to
3 avoid the Department of Social Services-- who would continue to try
4 to get me and my siblings until we were 18 years old (as well as
5 the Department of Youth Services from placing me in their custody
6 making it very difficult to provide for my family). So, on the
7 advice of the older guys from around my way, I would say I was
8 older to make it easier for them to get me bailed out knowing my
9 situation with my siblings;

10 11. That Petitioner didn't know that I had a legal right to
11 face my accusers or that a jury is made up of my peers in the
12 community, because at that time in my life, affiant didn't know
13 how to read and write all that well as stated above. I attended
14 various schools that had a "766 PROGRAM FOR SPECIAL NEEDS STUDENTS"
15 Affiant attended these schools up until I dropped out, due to
16 family circumstances. I attended 1) Sarah Greenwood Elementary
17 School, where I was taught by one of two (2) teachers named
18 Mrs. Offley; I attended 2) the Grover Cleveland Middle School as
19 well as the Timothy Middle School, where I supposedly had gradua-
20 ted from, although I had attended school very little or none at
21 all-- due to my family situations and DSS looking for us;

22 12. That the District Court made an error when they said my
23 father had left when I was 14 years old. My father had been absent
24 from my life since I was 10 years old. And, my mother's mental
25 illness and drug abuse had then became extremely bad/serious when
26 I was 13 years old; at which time I could no longer go to school
27 and I had to start selling drugs for older guys to provide for my
28 siblings survival and education and shelter needs etc., while also

1 avoiding the Department of Social Services;

2 13. That Judge Dolan mentioned prior convictions in the
3 Dorchester Court to determine my experience to the Rules, Regula-
4 tions and Procedures etc., then cites two cases and mentions one
5 prior. The offense (dated 7/3/92) Docket No. 9207JC0393 and
6 offense (dated 5/22/92) Docket No. 9207CR4071, were actually when
7 affiant was 16 years of age and lying about my age to avoid DYS and
8 DSS, from taking me from my siblings; knowing that I was all they
9 had in their lives and me gone, would be a drastic travesty seeing
10 that they would then become homeless and roaming the streets look-
11 ing for shelter and food etc., if I would have allowed myself to be
12 apprehended and sent back to juvenile detention;

13 14. That at my Federal Sentencing in front of the Honorable
14 Nancy Gertner, D.J. (November 17th, 2001), I was asked to address
15 the Court at which time I stood up to explain my lack of education,
16 my reasons back then, for lying about my age to avoid being placed
17 in Juvenile Detention and as well as my ignorance to the court's
18 language (legal jargon). Affiant also wanted to express my
19 innocence in the matter of my federal conviction and the prior
20 conviction that had led to me being enhanced; but, as I started to
21 address the Honorable Gertner's question(s) regarding my federal
22 offense, I was interrupted by Defense Counsel-- to be quiet and not
23 to answer anymore questions. Affiant wanted to address the quest-
24 ion(s) and further explain my reasons why I chose to go to trial
25 this time i.e., after learning that I had legal rights and I was
26 innocent. Whereas, in the past, I had no knowledge that I could
27 have exercised those rights;

28 15. That in the Honorable Gertner's courtroom, was the

1 closest that I had ever come to having an evidentiary hearing on my
2 prior conviction. Although I had taken the advice of my federal
3 attorney, Mr. Palmer, Esq., I then had to live regretting not being
4 able to explain my side of the events that led up to my enhancement
5 on said matter; and

6 16. That once granted the opportunity to acquire an
7 evidentiary hearing, I would be able to substantiate all the
8 aforementioned facts outside the record i.e., by subpoenaing
9 documents and various individuals etc., to prove that said prior
10 conviction was not made knowingly, voluntarily and intelligently.

11 I, Affiant, Charles Wilkerson, pro-se, hereby swear under the
12 penalty of perjury [PURSUANT TO TITLE 28 U.S.C. §1746], that the
13 aforementioned facts as a whole, are all true and correct to the
14 best of Petitioner's/Affiant's own personal knowledge and/or clear
15 recollection.

16 EXECUTED ON THIS 27 DAY OF SEPTEMBER, 2004.

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18 Respectfully submitted,
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21 Charles Wilkerson
22 SIGNATURE OF AFFIANT
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DATE: 11/14/94 BOS CRT: ROXBURY DISTRICT(2)
 OFFENSE: ATTACHING WRONG MV PLATES(124P)
 DISPOSITION: C 1/10/95 DISM

DKT# 9402CR9206A

STATUS: CLOSED

DATE: 11/14/94 BOS CRT: ROXBURY DISTRICT(2)
 OFFENSE: KNOWINGLY REC STOLEN PROP(RSB)
 DISPOSITION: C 1/10/95 DISM

DKT# 9402CR9206D
 \$250 OR LESS

STATUS: CLOSED

PCF ADULT RECORD INFORMATION AS OF 05/06/98

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PRIM NAME: WILKERSON, CHARLES

DOB: 07/28/74 PCF#:1777910 *

DATE: 12/03/92 CRT: ROXBURY DISTRICT(2)
 OFFENSE: ASSAULT(ASLT)
 DISPOSITION: DF 6/28/94 D/R DISM

DKT# 9202CR9306A

STATUS: CLOSED

DATE: 08/18/92 CRT: DORCHESTER DISTRICT(7)
 OFFENSE: POSS TO DISTRIBUTE CLASS B(CSA POSS DIST B)
 DISPOSITION: DF 5/10/93 D/R 6 2YR SS 5/10/95 5/19/95 TERM

DKT# 9207CR6338A

STATUS: CLOSED

DATE: 08/18/92 CRT: DORCHESTER DISTRICT(7)
 OFFENSE: CONSPIRACY TO VIO CONT SUB ACT(CSA CONSP)
 DISPOSITION: C 9/30/92 DF 5/10/93 D/R 6 FILE

DKT# 92097CR6338B

STATUS: CLOSED

DATE: 07/23/92 CRT: ROXBURY DISTRICT(2)
 OFFENSE: POSS CLASS B CONT SUB(CSA POSS B)
 DISPOSITION: DF D/R DF 7/1/93 D/R DISM

DKT# 9202CR3114A

STATUS: CLOSED

DATE: 07/23/92 CRT: ROXBURY DISTRICT(2)
 OFFENSE: POSS TO DISTRIBUTE CLASS B(CSA POSS DIST B)
 DISPOSITION: DF D/R DF 7/1/93 D/R DISM

DKT# 9202CR3114B

STATUS: CLOSED

DATE: 07/23/92 CRT: ROXBURY DISTRICT(2)
 OFFENSE: POSS TO DISTRIBUTE CLASS B(CSA POSS DIST B)
 DISPOSITION: DF D/R DF 7/1/93 D/R DISM

DKT# 9202CR3114C

STATUS: CLOSED

DATE: 07/08/92 CRT: ROXBURY DISTRICT(2)
 OFFENSE: POSS TO DISTRIBUTE CLASS B(CSA POSS DIST B)
 DISPOSITION: DF 7/1/93 D/R DISM

DKT# 9202CR5511A

STATUS: CLOSED

DATE: 07/03/92 CRT: DORCHESTER JURY SIX(607)
 OFFENSE: KNOWINGLY REC STOLEN PROP(RSB)
 DISPOSITION: C 8/5/92 VWF REST 6 PROB 7/2/93 (67) 9/30/92 DF 5/10/93 D/R R/R 18MO CNTD

DKT# 9207JC0393A
 MOTOR VEHICLE

STATUS: CLOSED

DATE: 07/03/92 CRT: DORCHESTER JURY SIX(607)
 OFFENSE: LARCENY(LAR)
 DISPOSITION: C 8/5/92 6 PROB 7/2/93 (67) 9/30/92 DF 5/10/93 D/R STATUS: CLOSED
 R/R 18MO CNTD

DKT# 9207JC0393B

STATUS: CLOSED

DATE: 07/03/92 CRT: DORCHESTER JURY SIX(607)
 OFFENSE: POSS BURGLARIOUS TOOLS(PBT)

DKT# 9207JC0393C

STATUS: CLOSED

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Juvenile
Juvenile
Juvenile

207
Juvenile

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